



Report to the Auburn City Council

Action Item
Agenda Item No. 10
City Manager's Approval

To: Mayor and City Council Members

From: Lance E. Lowe, AICP, Associate Planner *ELW*

Date: March 14, 2011

Subject: A Continued Public Hearing to Consider a Zoning Code Amendment of Section 159.019 of the Auburn Municipal Code for Medical Marijuana Dispensaries. The Proposed Amendment Provides Non-Criminal Penalties for Violation of the City's Prohibition of Medical Marijuana Dispensaries.

The Issue

Should the City Council Adopt the Proposed Ordinance to Amend Section 159.019 of the Auburn Municipal Code for Medical Marijuana Dispensaries?

Conclusions and Recommendation

The Planning Commission recommends that the City Council take the following action:

- A. Introduce and hold a first reading, by title only, of an Ordinance amending Section 159.019 of the Auburn Municipal Code for Medical Marijuana Dispensaries. The Proposed Amendment Provides Non-Criminal Penalties for Violation of the City's Prohibition of Medical Marijuana Dispensaries (**Attachment 1 of Exhibit A**).

History/Background

As a result of recent court judgments, the City Attorney has recommended that the City incorporate provisions in the Zoning Code relating to the City's prohibition of Medical Marijuana Dispensaries. Accordingly, the Community Development Department proposes amendment of the zoning ordinance to eliminate criminal penalties for Medical Marijuana Dispensaries. The proposed text amendment continues to prohibit Medical Marijuana Dispensaries in all zones of the City; however, in lieu of criminal penalties for any such violation(s), non-criminal penalties (i.e. citations) would apply. The recommended additional text to the City's zoning ordinance states as follows:

"No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code §11362.7 through 11362.83) shall be made criminal by this code. Such conduct that violates the requirements of this code shall be subject to non-criminal penalties only."

The above added text avoids conflicts with the provisions of the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA), which decriminalizes possession and cultivation of marijuana for specified medical purposes (**Attachment 2 of the February 1, 2011 Planning Commission Staff Report**).

On February 1, 2011, the Auburn Planning Commission recommended that the City Council adopt the draft ordinance as presented (Motion: Vitas; Seconded: Spokely; Ayes: Vitas, Young, Spokely & Snyder; Absent: Worthington)(**Exhibit A**). At the Planning Commission public hearing, no persons spoke for or against the proposed zoning code amendment.

Staff has coordinated with the City Attorney and Police Chief on the revised zoning code provisions, as drafted.

Environmental Determination

The Auburn Community Development Department reviewed this project for compliance with the California Environmental Quality Act (CEQA) and found it to be Statutorily Exempt from the provisions of CEQA per Section 15061 (b)(3).

Alternatives Available to Council; Implications of Alternatives

1. Adopt the Ordinance Amending Section 159.019 of the Auburn Municipal Code as presented, or as Amended by the City Council; or,
2. Do not adopt the Ordinance Amending Section 159.019 and provide further direction to staff

Fiscal Impacts

The staff costs incurred for the preparation of the draft ordinance, in consultation with the City Attorney and Police Chief, has been budgeted.

Additional Information

Please see the following attachments for more details:

ATTACHMENT –

1. Planning Commission Staff Report dated February 1, 2011 with Attachments & Exhibit:

Attachment 1 – Section 159.019 of the Auburn Municipal Code

Attachment 2 –Health & Safety Code Section 11362.5 & H&S Code Sections 11362.7 through 11362.83

Exhibit A – Planning Commission Resolution No. 11-3 with Attached Draft Zoning Code Amendment Section 159.019



ATTACHMENT



CITY OF AUBURN

Planning Commission – Staff Report
Meeting Date: February 1, 2011

Prepared by: Lance E. Lowe, AICP, Associate Planner

ATTACHMENT 1

ITEM NO.
V-B

ITEM V-B: ZONING CODE AMENDMENT OF SECTION 159.019 OF THE AUBURN MUNICIPAL CODE FOR MEDICAL MARIJUANA DISPENSARIES.

REQUEST: Recommendation to the City Council to amend Section 159.019 of the Auburn Municipal Code relating to Medical Marijuana Dispensaries. The proposed amendment provides non-criminal penalties for the violation of the City's prohibition of Medical Marijuana Dispensaries – **ADMIN. FILE 301.3(p).**

RECOMMENDED MOTION:

That the City of Auburn Planning Commission recommend that the City Council take the following action:

- A. Adopt Resolution No. 11-3 (**Exhibit A**) recommending that the Auburn City Council approve the Zoning Code Amendment providing non-criminal penalties for Medical Marijuana Dispensary violations, as presented, or as amended by the Planning Commission, which includes the following actions:
1. Adoption of a Statutory Exemption prepared for the Zoning Code Amendment as the appropriate level of environmental review in accordance with Section 15061 (b) of the California Environmental Quality Act (CEQA) Guidelines;
 2. Adoption of Findings of Fact for approval of the Medical Marijuana Dispensary Zoning Code Amendment, as presented in this Staff Report; and,
 3. Approval of the proposed Medical Marijuana Dispensary Zoning Code Amendment as presented in this Staff Report.

HISTORY:

The City of Auburn has prohibited Medical Marijuana Dispensaries or any other facility or use which involves the distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law since 2006 (Ord. 06-2, eff. 4-12-2006)(**Attachment 1**).

PROJECT DESCRIPTION:

As a result of recent court judgments, the City Attorney has recommended that the City incorporate provisions in the Zoning Code relating to the City's prohibition of Medical Marijuana Dispensaries. Accordingly, the Community Development Department proposes to

amend its current zoning ordinance prohibition on Medical Marijuana Dispensaries to eliminate criminal penalties for any violation of the ordinance, relying instead on civil remedies to enforce the City's provisions. The proposed text amendment continues to prohibit Medical Marijuana Dispensaries in all zones of the City; however, in lieu of criminal penalties for any such violations, non-criminal penalties (i.e. citations) would apply.

The recommended additional text to the City's zoning ordinance is as follows:

"No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code §11362.7 through 11362.83) shall be made criminal by this code. Such conduct that violates the requirements of this code shall be subject to non-criminal penalties only."

The above added text avoids conflicts with the provisions of the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA) (**Attachment 2**), which decriminalizes possession and cultivation of marijuana for specified medical purposes.

Staff has coordinated with the City Attorney and Police Department on the revised zoning code provisions, as drafted.

ENVIRONMENTAL DETERMINATION:

The Auburn Community Development Department reviewed this project for compliance with the California Environmental Quality Act (CEQA) and found it to be Statutorily Exempt from the provisions of CEQA per Section 15061 (b).

ATTACHMENTS:

1. Section 159.019 of the Auburn Municipal Code
2. Health & Safety Code Sections 11362.5 and Sections 11362.7 through 11362.83

EXHIBIT:

- A. Planning Commission Resolution No. 11-3 with Attached Draft Zoning Code Amendment Section 159.019



ATTACHMENTS

(W) Combining District (-15);

(X) Combining District (-1A);

(Y) Combining District (-2A);

(Z) Combining District (-P) and

(AA) Central Business-A District (C-2A).

(1973 Code, § 9-4.401) (Ord. 558, eff. --; Am. Ord. 569, eff. --; Am. Ord. 591, eff. --; Am. Ord. 630, eff. --; Am. Ord. 639, eff. --; Am. Ord. 655, eff. 9-26-1974; Am. Ord. 01-01, eff. 8-9-2001)

§ 159.016 HEIGHT, LOT WIDTH, LOT FRONTAGE, YARDS, AREA PER UNIT, LOT AREA, LOT COVERAGE AND OFF-STREET PARKING.

Subject to all the other provisions of this chapter, the regulations for the above listed, as set out in Appendix A to this chapter, shall apply in the districts established by § 159.015.

(1973 Code, § 9-4.402) (Ord. 558, eff. --)

§ 159.017 ZONING MAP.

(A) The designations, locations and boundaries of the districts established by § 159.015 are delineated upon the zoning map of the city, which map and all notations and information thereon are hereby made a part of this chapter.

(B) (1) The zoning map, for convenience, may be divided into section maps, and each such section map may be separately referred to or amended for the purposes of amending the zoning map.

(2) The zoning map and each of its section maps, and the notations, references and other information shown thereon, shall be as much a part of this chapter as if the matters and information set forth by the maps were all fully described in this chapter.

(C) (1) The zoning map of the city shall be kept on file and updated at the Community Development Department of the city.

(2) A copy of the updated zoning map shall also be on file at the office of the City Clerk. (1973 Code, § 9-4.403) (Ord. 92-4, eff. 5-13-1992)

§ 159.018 UNCLASSIFIED LAND.

In any case where any land is not shown on the zoning map as within a zone, or whenever any land is annexed to, or consolidated with, the city, the land shall be deemed to be within the Single-Family Residential (R) District until otherwise zoned. (1973 Code, § 9-4.404) (Ord. 558, eff. --; Am. Ord. 585, eff. --)

§ 159.019 PROHIBITED USES.

The following uses are prohibited in all zones established by this chapter and may not be conducted anywhere in the city:

(A) Medical marijuana dispensaries or any other facility or use which involves the distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law. (Ord. 06-2, eff. 4-12-2006)

USES PERMITTED

§ 159.030 SINGLE-FAMILY RESIDENTIAL DISTRICT (R-1).

(A) The following uses shall be permitted in the Single-Family Residential (R-1) District:

(1) One single-family detached dwelling unit occupied by a single family and appurtenant accessory buildings;

prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

11362.9. (a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11357-11362.9

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100).

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

11358. Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

11359. Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

11360. (a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to

transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished by imprisonment in the state prison for a period of two, three or four years.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

11361. (a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

11361.7. (a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

11362. As used in this article "felony offense," and offense "punishable as a felony" refer to an offense for which the law

prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

11362.9. (a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the

following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with the acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall

utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, **marijuana**. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The **marijuana** studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all **marijuana** used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply **marijuana** for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(1) (1) To enhance understanding of the efficacy and adverse effects of **marijuana** as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of **marijuana** in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of **marijuana** as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different

cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m) (1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o) (1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

EXHIBIT



EXHIBIT A

PLANNING COMMISSION RESOLUTION NO. 11-3

A RESOLUTION OF THE CITY OF AUBURN AMENDING SECTION 159.019 OF THE AUBURN MUNICIPAL CODE FOR MEDICAL MARIJUANA DISPENSARIES (ADMIN FILE# 301.3(p))

Section 1. The City of Auburn Planning Commission held a public hearing at its regular meeting of February 1, 2011 to consider a recommendation to the City Council of Chapter 159 of Title XV of the Auburn Municipal Code amending Section 159.019 of the Auburn zoning ordinance relating to Medical Marijuana Dispensaries. The proposed amendment provides non-criminal penalties for the violation of the City's prohibition of Medical Marijuana Dispensaries.

Section 2. The City of Auburn Planning Commission has considered all of the evidence submitted into the administrative record which includes, but is not limited to:

1. Agenda report prepared by the Community Development Department for the February 1, 2011, meeting.
2. The draft amendment of Section 159.019.
3. Staff presentation at the public hearing held on February 1, 2011.
4. Public comments, both written and oral, received and/or submitted at or prior to the public hearing.
5. All related documents received and/or submitted at or prior to the public hearing.
6. The City of Auburn General Plan, Zoning Ordinance, and all other applicable regulations and codes.

Section 3. In view of all of the foregoing evidence, the City of Auburn Planning Commission recommends the following:

1. The Auburn Community Development Department reviewed this project for compliance with the California Environmental Quality Act (CEQA) and found it to be Statutorily Exempt from the provisions of CEQA per Section 15061(b) for projects where it can be seen with certainty that no significant effect will occur.
2. The amendment to Section 159.019 is consistent with the goals, objectives and policies of the City's General Plan; and,
3. The amended Medical Marijuana Dispensary Ordinance is consistent with State law and is the minimum necessary to protect the health, safety and general welfare.

Section 4. In view of all of the evidence and based on the foregoing findings and conclusions, the City of Auburn Planning Commission hereby recommends adoption of a Statutory Exemption in accordance with Section 15061 (b) of the California Environmental Quality Act (CEQA) and Guidelines.

Section 5. In view of all of the evidence and based on the foregoing findings and conclusions, the City of Auburn Planning Commission hereby recommends that the City Council approve the amendments to Section 159.019 of the City's Zoning Code attached herewith as Attachment 1.

Section 6. In view of all the evidence and based on the foregoing findings and conclusions, the City of Auburn Planning Commission, upon motion by Commissioner Vitas and seconded by Commissioner Spokely hereby recommends adoption of the Statutory Exemption and recommends that the City Council approve amendments to Section 159.019, and carried by the following vote:

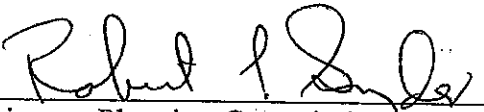
AYES: Vitas, Young, Spokely, & Snyder

NOES:

ABSENT: Worthington

ABSTAIN:

PASSED AND RECOMMENDED this 1st day of February, 2011.



Chairman, Planning Commission
of the City of Auburn, California

ATTEST: 

Community Development Department

ORDINANCE NO. 11-__

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF AUBURN AMENDING
SECTION 159.019 OF THE AUBURN MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 159.019 of the Auburn Municipal Code regarding prohibited zoning uses and medical marijuana dispensaries is hereby amended to read as follows:

"§ 159.019 PROHIBITED USES.

The following uses are prohibited in all zones established by this chapter and may not be conducted anywhere in the city:

(A) Medical marijuana dispensaries or any other facility or use which involves the distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.

(1) No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Such conduct that violates the requirements of this code shall be subject to non-criminal remedies only."

Section 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 3. Effective Date. This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

Section 4. Construction. To the extent the provisions of the Auburn Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this ordinance, they shall be read as continuations of those earlier provisions and not as new enactments.

Section 5. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: March 14, 2011

William W. Kirby, M.D., Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 14th day of March 2011 by the following vote on roll call:-

Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk